

TRANSPORT DEPARTMENT

The 8th June, 1967

No. 2627-1 T and T-67/16484.—The Governor of Haryana is pleased to extend further the term of appointment of Shri R. N. Bhatia, as Extra Assistant Transport Controller (Technical) in the pay scale of Rs. 300—25—475/25—650/30—800 upto the 26th September, 1967, the date of his retirement on attaining the age of superannuation.

S. K. CHHIBBER,

Secretary to Government, Haryana,
Transport Department.

FINANCE DEPARTMENT

The 9th May, 1967

No. 4235-TA-HR(IT)-67/189.—Shri P. L. Gulati, on his promotion as Treasury Officer in the scale of Rs. 250—25—500/30—650 took over the charge of the post of Treasury Officer, Hissar on the forenoon of 28th March, 1967.

B. S. MANCHANDA, Secy.

LABOUR AND EMPLOYMENT DEPARTMENTS

The 6th June, 1967

No. 4393-3 Lab-67/16408.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Globe Steels, Mathura Road, Ballabgarh:

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

REFERENCE No. 2 OF 1967

between

THE WORKMEN AND THE MANAGEMENT OF M/S GLOBE STEEL, MATHURA
ROAD, BALLABGARH

Present :

Shri A.R. Handa on behalf of the workmen.

Shri O.N. Verma with Shri S.N. Bhadari on behalf of the management.

AWARD

The Government of Haryana by means of their gazette notification No. 156-SF-III-Lab-66/33, dated the 28th December, 1966 and in exercise of the powers conferred on them by section 10(1)(c) of the Industrial Disputes Act, 1947 have referred to this Court for adjudication the following dispute between the workmen and the management of M/s Globe Steel, Mathura Road, Ballabgarh :—

Whether the dismissal of Shri Habib Khan was justified and in order ? If not, to what relief/exact compensation he is entitled ?

Usual notices were issued to the parties and in response thereto a statement of claim, dated the 30th January, 1967 was filed on behalf of the claimant Shri Habib Khan and the management filed their written statement, dated 7th February, 1967 in the case. It is a common ground between the parties that a charge sheet was issued to Shri Habib Khan claimant by the management for certain alleged misconducts and Shri Habib Khan submitted his explanation denying the charges against him contained in the charge sheet of the management. It is a common ground between the parties that an enquiry was held by the management as a result of which the claimant Shri Habib Khan was dismissed from service because according to the management the charges against Shri Habib Khan had been fully proved in the domestic enquiry held by them against him. In the statement of claim, dated 30th January, 1967 filed by Shri A.R. Handa on behalf of Shri Habib Khan, it has been pleaded that the charge of theft mentioned in the charge sheet was vague as it did not specify the particular tools which were said to have been stolen by the claimant nor did it state how and when and where the tools had been stolen. It has been pleaded that on this ground alone the enquiry held by the management is vitiated. It has also been pleaded that the Executive Director of the respondent company who had issued the charge sheet to Shri Habib Khan was not competent to issue the charge sheet under the standing orders applicable to the respondent company. It has further been pleaded that as the Executive Director himself had held the enquiry ultimately against the claimant, the enquiry was bad in as much as the same gentleman could not be a judge and a prosecutor. It has further been pleaded that the action of the management in dismissing the claimant is nothing but victimisation on the part of the management. The enquiry is claimed to be vitiated also on the ground that a copy of enquiry report was not furnished to the claimant. It has also been pleaded that unfair practices were employed by the management in the enquiry and one of these which singly vitiates the whole proceedings was that after close of the prosecution evidence and the defence evidence and after months had elapsed thereafter the Enquiry Officer again admitted prosecution evidence. It has been pleaded that from the evidence on record the management have failed to prove the charge of theft alleged against the claimant. It

has been pleaded that by suspending the claimant pending enquiry and by dismissing him ultimately the management have in fact inflicted two punishments on the claimant.

The management in their written statement have taken certain preliminary objections. It has been pleaded that the statement of claim dated 30th January, 1967 has been signed by Shri A.R. Handa for the workman and therefore this statement of claim does not merit any consideration. It has further been pleaded that the Globe Steel Mazdoor Union on whom a copy of the order of reference has been served has no *locus standi* to contest the present case. It has further been pleaded that the management had applied to the Industrial Tribunal, Punjab, under Section 33(2) (b) of the Industrial Disputes Act, 1947 for approval of their action to dismiss the claimant Shri Habib Khan and as their action was approved by the Industrial Tribunal, the order of Industrial Tribunal is a bar to the present reference. On merits the pleadings filed on behalf of the claimant Shri Habib Khan have been denied by the management. It has been pleaded that Shri Habib Khan has been dismissed by the management as a result of a valid domestic enquiry and this Court is not competent to challenge that enquiry because the same has been held in accordance with the principles of natural justice and there are no valid grounds on which it can be ignored by this Court.

The following issues were framed in the case :—

- (1) Whether Shri A.R. Handa is not competent to represent the workman in this case and whether he could not sign and verify the present statement of claim ?
- (2) Whether the Globe Steel Mazdoor Union is not competent to contest the present case ?
- (3) What is the effect of the grant of approval by the Industrial Tribunal, Punjab to the dismissal of the claimant by the management, which approval was granted under Section 33(2) (b) of the Industrial Disputes Act, 1947 ?
- (4) Whether the domestic enquiry conducted by the management in this case is vitiated on the grounds mentioned in the statement of claim dated the 30th January, 1967 filed by Shri A.R. Handa ?
- (5) Whether the claimant Shri Habib Khan has been victimised by the management ?
- (6) If the above issues are decided against the management, whether the dismissal of Shri Habib Khan by the management is justified and in order and if so, to what relief/exact compensation he is entitled ?

Issues Nos. 1 to 5 were treated as preliminary issues and the evidence of the parties was recorded and their arguments heard on those issues.

Issues Nos. 1, 2 and 3.—In view of my finding on issue No. 4 to the effect that the workmen have failed to prove that the domestic enquiry conducted by the management is vitiated in any respect, it is unnecessary to decide issues Nos. 1, 2 and 3 for even if these issues go against the management, the finding on issue No. 4 in itself is sufficient to decide the case in their favour.

Issue No. 5.—There is absolutely no evidence on the record to the effect that the claimant Shri Habib Khan has in any way been victimised by the management. As held by the Supreme Court in 1963-II-LLJ-429 (Ananda Bazar Patrika and their employees) a finding as to victimisation can be drawn only where the evidence has been led to justify it and that such a finding should not be made either in a casual manner or light-heartedly. It was conceded by the learned representative of the workmen that in the present case no evidence has been led by him to justify the finding of victimisation by the management. Issue No. 5 is decided in favour of the management.

Issue No. 4.—As stated above the fact of enquiry having been held by the management is admitted in this case. Ex. M/2 is the charge sheet issued to the claimant Shri Habib Khan by the management. This charge sheet is dated 21st May, 1965. Ex. M/4 is the explanation submitted by Shri Habib Khan to the charge sheet. This explanation is dated 24th May, 1965. Ex. M/3 is the letter, dated 27th May, 1965 in which the claimant Shri Habib Khan was informed that an enquiry will be held against him into the charges contained in the charge sheet on 31st May, 1965 by the Executive Director of the company. Ex. M/5 are the enquiry proceedings. Ex. M/6 is the report made by the Enquiry Officer and Ex. M/8 is the letter issued to the claimant Shri Habib Khan informing him that he had been dismissed from the service of the company. Shri A.R. Handa who argued the case on behalf of the claimant Shri Habib Khan tried to vitiate the enquiry on several grounds. His first objection was that the charge of theft against the claimant Shri Habib Khan was vague inasmuch as it did not specify the tools which were said to have been stolen by him and also because it did not say as to how and when and where the tools were stolen. I am satisfied that this objection is not valid. The charge sheet contains as many as four charges against Shri Habib Khan. These charges relate to negligence of his duties, to disobedience of his

superior, to his remaining absent from his place of duty and to a theft of some tools which were found in his Almirah in the presence of certain witnesses mentioned in the charge sheet. It is thus clear that the charge of theft was not the only charge against Shri Habib Khan. There were three other charges which were not of a less serious nature than the charge of theft. In his explanation to the charge sheet, Shri Habib Khan does not deny that the tools alleged to have been stolen by him were not recovered from his Almirah in the presence of the witnesses mentioned in the charge sheet. His version as given in the explanation to the charge sheet is that those tools were placed in his Almirah at the instance of the management to false by implicate him in the case. So far as the identity of the tools stated to have been stolen by the claimant Shri Habib Khan is concerned, that is not disputed by the claimant Shri Habib Khan in his explanation. He nowhere states in his explanation that the charge regarding the theft of tools made against him is vague and therefore he cannot submit a proper explanation for this charge. This is in evidence that lists of these tools were prepared by the management and the claimant Shri Habib Khan knew of those lists. The place from which the tools were found and the date and time on which these tools were found in the Almirah belonging to the claimant are not in dispute. In these circumstances I fail to appreciate the contention of the learned representative of Shri Habib Khan that the enquiry should be set aside because according to him one of the four charges contained in the charge sheet was vague. The next objection of Shri A.R. Handa was that the charge sheet was signed in this case by the Executive Director of the company, who was not competent to issue the charge sheet under the Model Standing Orders which are applicable to the respondent company. It was also contented that because the charge sheet had been signed by the Executive Director, he could not himself become the Enquiry Officer in this case. After hearing him at length on these objections, I am satisfied that they are not valid. The only provision in the model standing orders to which Mr. Handa drew my attention to support his above contention was model standing order No. 14 (4). This provision states that no order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the manager of the establishment or where there is no manager of the employer is required in every case of dismissal and when circumstances appear to warrant it, the manager or the employer may institute independent enquiries before dealing with charges against a workman. I have not been able to find any thing in this provision in the model standing orders to the effect that an Executive Director of a company is not competent to sign a charge issued to a workman or to hold an enquiry himself into an alleged misconduct against the workman. The concluding words of the above provision state that the manager or the employer may institute independent enquiries before dealing with charges against a workman. The matter has been left to the discretion of the manager or the employer in what cases independent enquiries are to be instituted by them. The Executive Director is an employer and in this case the main enquiry has been held by him. I, therefore, fail to understand why Shri A.R. Handa should make a grievance of it. The dismissal order has been passed in this case by the factory manager to whom the papers were put for necessary action. Standing order No. 14 (4) has, therefore, been fully complied with. As regards the contention of Mr. Handa that the Executive Director should not have held the enquiry himself because he has signed the charge sheet against the claimant, my attention has not been drawn by Mr. Handa to any authority of the Supreme Court or a High Court laying down any such proposition. Cases cannot be ruled out in which the employer himself runs the entire administration of a concern. In that case he himself has to issue the charge sheet and to hold the enquiry. The enquiry cannot be said to be vitiated for that reason. It was next argued by Mr. Handa that a copy of the report of the Enquiry Officer was not made available to the claimant Shri Habib Khan. The record does not show that the claimant at any time made a request to the management or the Enquiry Officer to supply him a copy of the report prepared by the Enquiry Officer at the end of the enquiry. In these circumstances the claimant cannot now complain that he was not supplied a copy of the enquiry report. My attention has not been drawn to any authority laying down that the copy of the enquiry report must be supplied to the delinquent in every case and the non-supply of such a copy is sufficient in itself to vitiate the entire enquiry proceedings. One of the objections raised in the statement of claim dated 30th January, 1967 filed by Shri A.R. Handa is that the Enquiry Officer several months after the close of the prosecution evidence and the defence evidence admitted some prosecution evidence. I asked him to point out to the relevant portion of the enquiry proceedings to substantiate his contention. He was not able to do so. One of the points argued by Mr. A.R. Handa was that the charge of theft has not been proved from the evidence led before the enquiry officer. It was argued that to prove a charge of theft the stolen property must be recovered and in the present case it was not recovered. Honestly I could not appreciate his line of argument. I cannot sit in these proceedings as a Court of appeal against the findings of the Enquiry Officer and reapraise the evidence produced by the parties before him. This Court can interfere only if the finding of the

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Enquiry Officer is perverse or baseless. The finding is based upon a good deal of evidence and cannot, therefore, be said to be baseless. It does not run counter to the evidence on record and therefore cannot be said to be perverse. This Court, therefore, is not competent to disregard the findings arrived at by the Enquiry Officer. It was argued on behalf of the claimant Shri Habib Khan that the management gave him two punishments firstly of depriving him of his suspension period wages in contravention of the model standing orders which stated that there could be no suspension for more than four days and secondly of dismissing him from service. It was contended that this was illegal and wrongful. This argument is fallacious. The delinquent was suspended in this case pending enquiry under rule 14 (5) of the model standing orders. The suspension in this case was not as a matter of substantive punishment referred to in rule 14 (2) of the model standing orders which states that a workman cannot be suspended for more than four days at a time. He was suspended pending enquiry under rule 14 (5) which states that the question of wages for the period of suspension would depend upon the result of enquiry to be held against him. He has been paid subsistence allowance for the period of his suspension pending enquiry at the rate of 50 per cent of his wages. It is not a case of double punishment as contended by the learned representative of the claimant but it is a case of suspension pending enquiry. Reference may be made in this connection to the judgements of the Supreme Court reported as 1959-II-LLJ-544 and 1961-ILLJ-652 and the judgement of the Rajasthan High Court reported as 1965-I-LLJ-517. The last contention raised by Mr. A.R. Handa was that the statement of the claimant Shri Habib Khan was recorded in the enquiry proceedings at the beginning of the enquiry and this fact in itself vitiates the enquiry proceedings. In this connection he cited two judgements of the Supreme Court of India reported as 1961-II-LLJ-625 and 1963-II-LLJ-396. I have not been able to find any thing in the former judgement to support the contention of Shri A.R. Handa. In the later judgement of the Supreme Court, the enquiry was held to be vitiated on account of several grounds like the importing of his own personal knowledge by the Enquiry Officer in his enquiry report. It was also held in that judgement that the delinquent in that case had been very closely cross examined at the commencement of this enquiry. This is not so in the present case. The record does not show that the claimant Shri Habib Khan was cross examined either by the management or by the Enquiry Officer at the commencement of the enquiry. It is a simple statement made by Shri Habib Khan denying the allegations made by the management against him in the charge sheet issued to him. This statement merely mentions his version as already given by him in his explanation submitted to the management before it was decided to hold an enquiry against him. There is nothing on the record to show that this statement was made by him at the instance of the management or the Enquiry Officer. I, therefore, do not think that the mere fact that the claimant at the commencement of the enquiry makes a statement before the Enquiry Officer denying the allegations made in the charge sheet against him is in itself a sufficient reason for holding the enquiry proceedings to be vitiated. After hearing the learned authorised representatives of the parties at length and giving my anxious consideration to the arguments advanced by them, I am satisfied that the workmen have failed to prove any valid grounds on which I can disregard the domestic enquiry held by the management and decide the case on merits myself. Issue No. 4 is, therefore, decided in favour of the management and the dismissal of Shri Habib Khan is held to be justified and in order. He is not entitled to any relief from the management in this regard. I make no order as to costs of these proceedings.

This award is submitted to the Government of Haryana Department of Labour as required under section 15 of the Industrial Disputes Act, 1947.

HANS RAJ GUPTA,

Dated 24th May, 1967

Presiding Officer,
Labour Court, Rohtak.

(Sd).....,

Under-Secretary to Government,
Labour, and Employment Department.

REVENUE DEPARTMENT
WAR JAGIR

The 6th June, 1967

No. 2967-R-(IV)-67/1877.—*Corrigendum*.—In Punjab Government (Revenue Department) notification No. 6286-JN-III-66/15172, dated the 27th June,

1966, published in Joint PUNJAB GOVERNMENT GAZETTE, dated the 15th July, 1966, the words "Akbarpur Nangal, tehsil and" shall be substituted for the words "Nangal Harnath, Tehsil Charkhi Dadri" appearing therein.